

PLR 200336030, 2003 WL 22064698 (IRS PLR)

Internal Revenue Service (I.R.S.)

Private Letter Ruling

Issue: September 5, 2003
June 6, 2003

Section 61 -- Gross Income v. Not Gross Income
61.00-00 Gross Income v. Not Gross Income
61.08-00 General Exclusions from Gross Income

Section 6041 -- Information at Source
6041.00-00 Information at Source

Section 6050P -- Returns Relating to Cancellation of Indebtedness by Certain Financial Entities
6050P.00-00 Returns Relating to Cancellation of Indebtedness by Certain Financial Entities

CC: ITA:Br05 / / PLR-143237-02

Legend:

M (Taxpayer) =
N (Program) =
A (State) =
B (County) =
C (County) =

Dear Taxpayer:

This is in response to your authorized representative's letters and submissions of July 30, 2002, and other correspondence, in which he requested on your behalf rulings regarding the proper federal income tax treatment, including any information reporting obligations, of certain housing assistance payments and benefits provided by you (sometimes referred to herein as M, or the "Tribe") under the N housing program, more fully described below. We are pleased to address your concerns.

The information submitted indicates that you, M, are a federally recognized tribe of Indians exercising authority under the provisions of a constitution approved by the Secretary of the Interior pursuant to the provisions of section 16 of the Indian Reorganization Act of 1934, as amended ([25 U.S.C. § 476](#)). The Tribe's traditional homelands are chiefly located in the northeast portion of State A, in B County. The Tribe is governed by a General Tribal Council, which is composed of all qualified voters of the community (any enrolled member who is twenty-one years of age or older). The General Tribal Council exercises governmental functions over tribal lands and matters, and conducts a host of general welfare-type programs and activities. Powers and duties of the General Tribal Council are exercised by an Executive Council, which consists of six elected officers.

The Tribe has identified a number of basic needs of its members, and housing is one of the more critical of these needs. A substantial number of M's members live in inadequate or substandard housing. Many residences lack heat, electricity, or running water. Much housing is provided through various federal housing subsidy programs. Conventional

home financing for new construction is in many cases not available because of limitations on creditor's rights and remedies on Indian trust lands. Accordingly, M established the N housing assistance program to provide housing assistance to qualified tribal members based on a needs-based priority system. The N housing assistance program was formally adopted at a Special General Council Meeting of the tribal government, and amended to its present format in 2002.

Under the N program, administered by the Tribal Housing Office, tribal members may apply for several housing assistance benefits, consisting primarily of mortgage loans for new home construction or acquisition, or existing home rehabilitations. In addition, certain other stipends and site improvement grants of nominal amounts (e.g., \$2,500) are available to those qualifying for the home mortgage financing assistance, intended for immediate home improvements. The mortgage financing benefit typically consists of up to \$80,000 in acquisition or construction financing, made by M, and repayable over a 15-year period without interest. Recipients are expected to repay 25% of the principal amount of the benefit in annual payments over the term of the note. The note provides for a reduction of the remaining 75% of the principal amount at the rate of 5% per year, so that at the end of the 15-year term, the entire balance will be paid or discharged. All payments received under the program from participants will be reserved for providing future housing assistance benefits to other tribal members. Although a goal of M is to increase opportunities for its members to live in adequate homes on trust lands under tribal self-government, housing will not be required to be located on tribal lands (but may not be located on trust lands of other sovereign Indian nations).

Benefits under the N program will be based on a consideration of financial as well as housing needs, and an assessment of credit risk. M has modeled the N program participation guidelines after those of other local U.S. Department of Housing and Urban Development (HUD) Programs, particularly the C County HUD Program. Priority will be given to elderly tribal members, emergency situations involving health or safety hazards, and applicants with children.

The Tribe conducts certain class III gaming operations on tribal lands pursuant to the Indian Gaming Regulatory Act, [25 U.S.C. § 2701, et seq. \(1988\)](#). Revenues from these operations are used to fund basic governmental services, and are the funding source for the tribe's social welfare programs and activities, including the N tribal housing program that is the subject of this ruling request.

[Section 61\(a\) of the Internal Revenue Code](#) provides that, except as otherwise provided by law, gross income means all income from whatever source derived. Under [§ 61](#), Congress intends to tax all gains or undeniable accessions to wealth, clearly realized, over which taxpayers have complete dominion. [Commissioner v. Glenshaw Glass Co., 348 U.S. 426 \(1955\), 1955-1 C.B. 207](#). Individual tribal members are citizens of the United States and are subject to federal income tax, unless specifically exempted by treaty or statute. See [Rev. Rul. 67-284, 1967-2 C.B. 55](#), modified on another issue by, [Rev. Rul. 74-13, 1974-1 C.B. 14](#), amplified by, [Rev. Rul. 94-16, 1994-1 C.B. 19](#), amplified by, [Rev. Rul. 94-65, 1994-2 C.B. 14](#).

The Internal Revenue Service (IRS) has consistently held that payments to individuals by governmental units under legislatively provided social benefit programs for promotion of the general welfare are excludable from the recipient's gross income ("general welfare exclusion").

Section 7701(a)(40) defines Indian tribal governments as the governing bodies of Indian tribes, bands, communities, villages, or groups of Indians, and recognizes that these bodies exercise governmental functions. In general, where Indian tribal governments act in such capacity to provide general welfare-type benefits of a kind traditionally provided by federal, state or local governmental bodies, as in the instant circumstances, the federal income tax treatment of such benefits is analogous.

The general welfare exclusion applies only to governmental payments out of a welfare fund based upon the recipients' identified need (which need not necessarily be financial), and not where made as compensation for services. See, e.g., [Rev. Rul. 57-102, 1957-1 C.B. 26](#) (payments to the blind); [Rev. Rul. 74-74, 1974-1 C.B. 18](#) (awards to crime

victims or their dependents); [Rev. Rul. 74-205, 1974-1 C.B. 20](#) (HUD replacement housing payments to aid displaced individuals and families); [Rev. Rul. 75-271, 1975-2 C.B. 23](#) (assistance payments for lower income families to acquire homes); [Rev. Rul. 76-395, 1976-2 C.B. 16](#) (home rehabilitation grants to low-income recipients); [Rev. Rul. 77-77, 1977-1 C.B. 11](#) (payments to Indians to stimulate and expand Indian-owned economic enterprises); and [Rev. Rul. 98-19, 1998-15 I.R.B. 5](#) (relocation payments made to flood victims).

In [Rev. Rul. 75-271](#), *supra*, the IRS held that mortgage assistance payments to lower income individuals provided under a governmental housing program designed to assist lower income families in acquiring home ownership and that were based on a consideration of financial need determined under Department of Housing and Urban Development guidelines, were in the nature of general welfare payments, and were excludable from recipient's gross incomes under the general welfare exclusion. In [Rev. Rul. 77-77](#), *supra*, the IRS concluded that grants made under a governmental program designed to meet a legislatively identified need of Indians of various tribes in the United States, were payments in the nature of general welfare, and excludable from recipients' gross incomes.

In the instant circumstances, based on the information submitted and representations made, we conclude that the **payments** and **discharges of indebtedness** made or effected by M under the N tribal housing program are similar to those benefits previously considered by the IRS in the authorities addressed above, are similarly within the scope of the "general welfare exclusion," and are thus excludable from the gross incomes of recipients for federal income tax purposes. The subject benefits are made by a governmental body, from a governmental welfare fund, pursuant to a legislative enactment, for the promotion of the general welfare, and do not represent either compensation for services or per capita distributions of net revenues from class II or III gaming activities.

Reporting and Withholding Obligations

[Section 6041\(a\) of the Code](#) provides, with exceptions not applicable here, that any person engaged in a trade or business must file an information return with respect to certain payments made in the course of that trade or business to another person aggregating \$ 600 or more in the calendar year. This filing requirement applies to payments (whether made in cash or property) of salaries, wages, commissions, fees, other forms of compensation for services, and other fixed or determinable gains, profit, or income.

[Section 6041\(d\) of the Code](#) requires persons who are required to make returns under [section 6041\(a\)](#) to furnish to the recipient of the payment a written statement showing the name, address, and identification number of the person making the return and the aggregate amount paid to the recipient that is required to be shown on the return.

[Section 1.6041-1\(c\) of the regulations](#) defines "fixed or determinable income." Income is fixed when it is to be paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained.

[Section 6041 of the Code](#) requires the reporting of all "compensations ... or other fixed or determinable gains, profits, and income." The word "income" as used in [section 6041](#) is not defined by statute or regulation; however, its appearance in the phrase "fixed or determinable gains, profits, and income" indicates that what is referred to is "gross income." Thus, the payments of compensation (and other amounts) required to be reported under [section 6041](#) are those includible in gross income.

Under [section 1.6041-1\(a\)\(2\) of the Income Tax Regulations](#), information returns required by [section 1.6041-1\(a\)\(1\)](#) must be made on Forms 1099 and 1096.

Because "income" under [section 6041 of the Code](#) is interpreted to mean only income includible in gross income under [section 61](#), the payments made by M pursuant to the N housing assistance program are not required to be reported under [section 6041](#).

Accordingly, based on the information submitted and representations made, we conclude that **payments** to individuals pursuant to the M program, as described above, are in the nature of general welfare and, therefore, are not includible in their gross income.

Accordingly, M is not required to report such **payments** under [section 6041](#).

As indicated above, M also effects its general welfare program through the discharging of N participant's mortgage indebtedness. Although these discharged amounts are similarly excludable from recipient's gross incomes under the general welfare exclusion, M's information reporting obligations with respect to these discharges are determined under section 6050P, rather than under [section 6041](#), *supra*.

Under section 6050P and the regulations thereunder, information reporting on Form 1099-C, *Cancellation of Debt*, may be required whether or not the amount is includible in gross income under [section 61\(a\)\(12\)](#) (relating to income from discharge of indebtedness). Section 6050P(a) provides, generally, that any "applicable financial entity" that discharges the indebtedness of any person during any calendar year must file an information return (Form 1099-C) with the IRS respecting such discharge. Under section 6050P(c)(2)(D), an "applicable financial entity" includes "any organization a significant trade or business of which is the lending of money."

In the present case, insufficient information has been submitted to determine whether M is described in section 6050P(c)(2)(D) and thus subject to section 6050P(a). Nonetheless, [Notice 2001-8, 2001-1 C.B. 374](#), modifying and extending [Notice 2000-22, 2000-1 C.B. 902](#), provides that penalties under sections 6721 and 6722 will not be imposed on any lending organization newly required to report discharges of indebtedness for failures to report any discharge of indebtedness that occurs prior to the first calendar year beginning at least two months after the date that appropriate guidance is issued (*e.g.*, the issuance of final regulations in the Federal Register) respecting the scope of section 6050P(c)(2)(D).

Accordingly, whether or not M is determined to be within the scope of section 6050P(c)(2)(D) (and thus required to report its N program discharges of indebtedness on Forms 1099-C), M will not be subject to any penalties for failing to report any **discharge of indebtedness** under the N program occurring prior to calendar year 2004, at the earliest. We recommend that M seek further guidance from this office or its tax professionals respecting any calendar year 2004 information reporting obligations, at a later date.

Section 3402(r) provides for the extension of withholding to certain taxable payments of Indian casino profits. As indicated, the payments and discharges of indebtedness effected by M under the N tribal housing program do not represent per capita payments or distributions of the net revenues of class II or class III gaming activities within the contemplation of this provision, and M does not otherwise make such distributions. Accordingly, M is not subject to section 3402(r) with respect to benefits provided under the N tribal housing program.

Final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked by adoption of final regulations, to the extent the regulations are inconsistent with any conclusions in this ruling. See section 12.04 of [Rev. Proc. 2003-1, 2003-1 I.R.B. 1](#). However, when the criteria in section 12.06 of [Rev. Proc. 2003-1](#) are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

This letter ruling is based on the facts and representations provided by M, and is limited to the matters specifically addressed. No opinion is expressed as to the tax treatment of the transactions considered herein under the provisions of any other sections of the Code or regulations which may be applicable thereto, or the tax treatment of any conditions existing at the time of, or effects resulting from, such transactions which are not specifically addressed herein.

Because it could help resolve possible federal tax issues, a copy of this letter ruling should be maintained with M's permanent records.

Pursuant to a power of attorney currently on file with this office, a copy of this letter is being sent to M's designated authorized representative.

This ruling is directed only to the taxpayer who requested it. [Section 6110\(k\)\(3\) of the Internal Revenue Code](#) provides that it may not be used or cited as precedent.

Sincerely yours,

Associate Chief Counsel (Income Tax & Accounting)

By

William A. Jackson
Chief, Branch 5

Enclosures:

Copy of this letter

Copy for [section 6110](#) purposes

This document may not be used or cited as precedent. [Section 6110\(j\)\(3\) of the Internal Revenue Code](#).

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